

BEFORE THE STATE OF MONTANA
SUPERINTENDENT OF PUBLIC INSTRUCTION

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|---------------------------------|---|---------------------------|
| MR. and MRS. DUSTY GILGER |) | |
| Boyes, Montana, |) | |
| Appellants, |) | <u>DECISION AND ORDER</u> |
| |) | OSPI 49-83 |
| vs. |) | |
| |) | |
| SCHOOL DISTRICT 79J, POWDER |) | |
| RIVER COUNTY, BROADUS, MONTANA, |) | |
| Respondent. |) | |
| ***** | | |

This is an appeal by Mrs. and Mrs. Dusty Gilger of Boyes, Montana, from the Decision and Order of the Powder River County Transportation Board which was undated, but which appears to have been signed by the Board on May 15, 1983.

A meeting was held before County Superintendent Don Bidwell on May 5, 1983. A transcript was prepared. A letter from County Superintendent Bidwell indicates that all members of the County Transportation Committee were present at the hearing on May 5, 1983. On May 15, 1983, a vote was taken not to reverse the Board's decision on the transportation route requested by the Gilgers.

The standards of review which I have adopted on transportation matters as well as the contested cases coming before me are set forth in Section 2-4-704 M.C.A. That statute provides:

(1) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency not in the record, proof thereof may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(2) The court may not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have

been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; or
- (g) because findings of fact, upon issues essential to the decision, were not made although requested.

See also Yanzick v. School District No. 23,
Mont. 39 St. Rptr. 191 (1982).

The membership of the County Transportation Committee is set forth in 20-10-131 M.C.A. The duties of the County Transportation Committee are found in 20-10-132 M.C.A.

The duties of the State Superintendent in this appeal are set forth in 10.6.125 ARM, which provides as follows:

... The state superintendent may affirm the decision of the (county transportation committee) or remand the case for further proceedings or refuse to accept the appeal on the grounds that the state superintendent fails to retain proper jurisdiction on the matter. The state superintendent may reverse or modify the decision if substantial rights of the Appellant have been prejudiced because the findings of fact, conclusions of law and order are (in part):

- (a) in violation of constitutional or statutory provisions
- (c) made upon unlawful procedure
- (d) affected by other error of law...

The findings of fact of the County Transportation Board are as follows:

1. That Mr. and Mrs. Dusty Gilger are residents of District 795 with a child who will attend grade one for the 1983-84 school term.

2. That on February 14, 1983, at a Board meeting of the trustees of District 79J, the Gilgers did request a change in the bus route which serves their area in Powder River County, Montana.

3. That on March 14, 1983, at a regular meeting, the trustees of District 79J, Powder River County, Montana, denied the request for bus route revision.

4. That on March 25, 1983, Mr. and Mrs. Gilger filed an appeal of the decision of the trustees with Donald L. Bidwell, Chairman, Powder River County Transportation Committee.

5. That on May 5, 1983, an appeal was heard before the Powder River County Transportation Committee at which time both parties presented sworn testimony.

6. That 20-10-121 MCA does obligate a board of trustees to provide transportation by bus or individual transportation.

7. That the mileage of the Gilger requested route was 5.2 miles greater than the present route as determined by measurement by Les Thompson, Highway Patrolman.

8. That the cost of the Gilger requested route would be greater by \$3,380.90 than the cost of the present route.

9. That the present condition of 6.8 miles of the Gilger requested route is unimproved.

10. That the two routes in question will provide bus transportation for an equal number of students.

Finding number 8 appears to be contradicted and opposed by the Gilgers in their findings which were submitted to the State Superintendent.

Specifically the Gilgers contend that:

6. The cost of the requested route is greater at present because the parents are absorbing the transportation costs to the route "the present route requires all parents to provide extra transportation, except those living at the Moore Ranch."

8. The present route will be costly to those having to provide transportation to it in the future.

10. In conclusion, the proposed bus route would serve the present and future needs with less individual transportation and expense.

A full review of the record indicates some testimony by a member of the Transportation Committee, Mrs. Carter, beginning on page 28 of the transcript discussing an additional cost of \$5,460.13, which would be presumably for the new route.

However, finding of fact number 8 indicates that that increased cost is \$3,380.90. There is no other basis in the transcript for that finding of fact and no indication of any stipulation or agreement between the parties that that cost was accepted or agreed to by all parties.

The cost of rural bus routes to the school districts and counties are relevant and should be considered by transportation committees. Further, it would seem that input from county commissioners as to their ability to improve or construct additional miles of roadway for the transportation route would be relevant to the discussion before this Transportation Committee.

This finding need not require much additional expense or delay. The parties could agree to figures by stipulation as they did with the Highway Patrolman traveling the route. They could also agree to accepting statements in writing or affidavits from the County Commissioners concerning the ability to upgrade the roads and to construct new roads for new bus routes.

In the transcript, there is a discussion of a nonexistent or old road, which the Appellants propose to have opened with the County Commissioners. I believe that information from the Commissioners as well as a clear discussion of the increased costs would provide a more sound basis for the decision of the County Transportation Committee. Copies of the guidelines from the state office should be useful to both sides at the next hearing.

Rural school bus routes are vital to the efficient functioning of many of our school districts. The County Transportation Committee should take into account not only the location of roads, but also location of students and children. By directing a rehearing before the local County Transportation Board, I am not trying to force any particular route on the local school district or the county. I am, however, seeking a fuller and more complete discussion of the issue which was presented by this appeal in hearing. I do not think each side requires a lawyer. I do not think that much additional time need be spent if agreement can be reached. However, I do believe that the informal atmosphere which was present at the first hearing is useful in reaching a decision. The informal

discussion must make available the relevant evidence and concerns necessary to reach a decision. I have articulated two additional matters which should be discussed. If both sides are more fully aware of all the facts that go into the final decision, a more acceptable resolution may be found and more understanding may be reached rather than more disputes growing out of such a process.

In accordance with the foregoing decision, it is hereby ORDERED that the decision of the Powder River County Transportation Committee be vacated and the matter is remanded for a rehearing in accordance with the guidelines and directions set forth in this decision.

DATED this 27th day of October, 1983.